Supreme Court of the United States.

Nos. 149 and 466.—October Term, 1904.

No. 149. Frederic W. Lincoln, Henry W. Peabody, John R. Bradlee and Charles D. Barry, trading as copartners under the firm name and style of Henry W. Peabody & Co., Plaintiffs in Error,
vs.
The United States.

In Error to the District Court of the United States for the Southern District of New York.

No. 466. Warner, Barnes and Company, Limited, Appellant,
vs.
The United States.

Appeal from the Court of Claims.

[April 3, 1905.]

Mr. Justice Holmes delivered the opinion of the Court.

These are suits to recover duties exacted from the plaintiffs in error and appellants upon merchandize shipped by them from New York to Manila, and landed at the latter port between April 11, 1899, the date when the ratifications of the treaty with Spain were exchanged and October 25, 1901. The duties were levied under an order of the President dated July 12, 1898. The case of Peabody & Co. was decided on demurrer to the answer of the United States, which set up that during the time mentioned there existed an armed insurrection in the Philippine Islands of such size as to call for military operations by the United States; that, although Manila was in our possession, it was held only by force of arms as a part of hostile territory, and that the President's order was a lawful exercise of the war power of the United States. The District Court overruled the demurrer and dismissed the suit. Fed. Rep. The case of Warner, Barnes & Co. was decided on a finding of facts by the Court of Claims, and that Court also dismissed the petition. C. Cl. R. These facts mainly concern the magnitude of the insurrection and need not be stated.

It will be observed that the President's order relied upon was an order issued during the war with Spain, nine months before the treaty of peace was made. It was a measure taken with reference to that war alone, and not with reference to the insurrection of the native inhabitants of the Philippines, which did not happen until much later. Aguinaldo declared hostilities on February 4, 1899. The natural view would be that the order expired by its own terms when the war with Spain was at an end. The order

directs that "upon the occupation of any forts and places in the Philippine Islands by the forces of the United States," the duties shall be levied and collected "as a military contribution." Of course, this was not a power in blank for any military occasion which might turn up in the future. It was a regulation for and during an existing war, referred to as definitely as if it had been named. See *Dooley* v. *United States*, 182 U. S. 222, 234, 235.

However this may be, we are of opinion that the cases before us are governed by the decision in *Fourteen Diamond Rings*, 183 U. S. 176, 180, 181. In that case it was decided that after the title passed to the United States there was nothing in the Philippine insurrection of sufficient gravity to give to the islands the character of foreign countries within the meaning of a tariff act. That means that there was no such "firm possession" by an organized hostile power as made Castine a foreign port in the war of 1812. *United States* v. *Rice*, 4 Wheat. 246, 254. Whatever sway the the Philippine government may have had in Luzon we suppose that probably at any time the United States could have sent a column of a few thousand men to any point on the island, as was stated by the Secretary of War in his report in 1899, and as the United States was willing that the Court of Claims should find. In the language of the above mentioned decision: "If those in insurrection against Spain continued in insurrection against the United States, the legal title and possession of the latter remained unaffected."

Apart from the question of the duration of the President's order, it plainly was an order intended to deal with imports from foreign countries only and Philippine ports not in the actual military control of the United States. But even had it been intended to have a wider scope we do not perceive any ground on which it could have been extended to imports from the United States to Manila, a port which was continuously in the possession as well as ownership of the United States from the time of the treaty with Spain. Manila was not like Nashville during the Civil War, a part of a State recognized as belligerent and as having impressed a hostile status upon its entire territory. *Hamilton* v. *Dillin*, 21 Wall. 73, 94–96. The fact that there was an insurrection of natives not recognized as belligerents in another part of the island, or even just outside its walls, did not give the President power to impose duties on imports from a country no longer foreign. See *Dooley* v. *United States*, 182 U. S. 222, 234.

We see no sufficient ground for saying that the collection of these duties has been ratified by Congress. The only act needing mention is that of July 1, 1902, c. 1369, § 2, 32 Stat. 691, 692. That Act ratifies the action of the President "heretofore taken by virtue of the authority vested in him as Commander-in-Chief of the Army and Navy, as set forth in his order of July twelfth, 1898," &c., together with the subsequent amendments to that order. "And the actions of the authorities of the government of the

Philippine Islands, taken in accordance with the provisions of said order and subsequent amendments, are hereby approved." Without considering how far the first part of the section extends, the approval of the action of the authorities is confined to those which were in accordance with the provision of the order, which, as we already have intimated, the collection of these duties was not. See further *De Lima* v. *Bidwell*, 182 U. S. 1, 199, 200.

Judgments reversed.

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Test:

Clerk Supreme Court, U. S.